

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

RAYMOND WARE,	)	CIVIL NO. 04-00671 HG LEK
	)	
Plaintiff,	)	DECLARATION OF COUNSEL
	)	
vs.	)	
	)	
MICHAEL CHERTOFF, Secretary,	)	
Department of Homeland Security;	)	
JOHN DOES 2-5,	)	
	)	
Defendants.	)	
_____	)	

DECLARATION OF COUNSEL

DAPHNE BARBEE, declares under penalty of perjury, as follows:

1. Declarant represents plaintiff in the above-entitled action.
2. Plaintiff was contacted by defense attorney AUSA Tom Helper who requested an extension of the discovery deadline to depose Mr. Ware January 11, 2008. Initially, Mr. Helper requested the date of January 15, 2008, but at plaintiff's objection to that late deadline, agreed to January 11, 2008.
3. Prior to January 11, 2008, plaintiff disclosed witnesses, including the named witnesses AUSA Helper now objects to.
4. Prior to the cutoff of discovery deadline, plaintiff requested of AUSA

Tom Helper to speak with the witnesses who are TSA employees. Defense attorney Helper refused, indicating that he considered the TSA employees to be agents of defendants and he would not allow plaintiff to unilaterally speak with them. See Exhibit 1.

5. Exhibit 2 is a true and accurate copy of a document provided by defendant to plaintiff and was previously filed as an exhibit in plaintiff's reply to defendant's Motion for Summary Judgment. The termination letter to Mr. Kamahele was written by witness Dennis Clark and summarizes statements made by LTSS Earl Yamasaki and TSS Lauren McMillian. Page 2-3. As these witnesses are TSA employees, plaintiff was not able to contact them unilaterally. Plaintiff includes Exhibit 2 as an offer of proof as to these three witnesses' testimony which goes to the credibility of Mr. Kamahele.

6. At the deposition of January 11, 2008, Mr. Ware was questioned about his witnesses and their testimony.

7. From the date of the Complaint up until the date of the deposition, January 11, 2008, Mr. Helper never contacted plaintiff's counsel to request a proffer from plaintiff's witnesses despite their identification. Defendant could have contacted and/or deposed the witnesses during discovery period but chose not to do so.

8. Exhibit 3 is a copy of the Plaintiff's Final Witness List with proffers of the named witnesses.

Further declarant sayeth naught.

DATED: Honolulu, Hawaii, 1-22-08.

  
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DAPHNE E. BARBEE  
Attorney for Plaintiff RAYMOND WARE